

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 99-4760

ROBERT CARBAJAL,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Virginia, at Richmond.
Richard L. Williams, Senior District Judge.
(CR-99-233)

Submitted: March 10, 2000

Decided: March 24, 2000

Before LUTTIG, WILLIAMS, and MICHAEL, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Owaiian M. Jones, Fredericksburg, Virginia, for Appellant. Helen F.
Fahey, United States Attorney, Nicholas S. Altimari, Assistant United
States Attorney, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Robert Carbajal appeals the district court's order revoking his supervised release and sentencing him to twenty-four months imprisonment. Carbajal contends that there was insufficient evidence to find that he participated in a bank robbery, a Grade A violation of supervised release under U.S. Sentencing Guidelines Manual § 7B1.1(a)(1) (1994). Finding no reversible error, we affirm.

The district court had only to find by a preponderance of the evidence that Carbajal had violated a condition of his supervised release. See 18 U.S.C.A. § 3583(e)(3) (West Supp. 1999). We review the court's decision for an abuse of discretion. See United States v. Copley, 978 F.2d 829, 831 (4th Cir. 1992). "The burden of showing something by a 'preponderance of the evidence' . . . simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact's existence." Concrete Pipe & Prods., Inc. v. Construction Laborers Pension Trust, 508 U.S. 602, 622 (1993) (quoting In re Winship, 397 U.S. 358, 371-372 (1970) (Harlan, J., concurring) (alteration in original) (internal quotation marks omitted)).

We find that the district court did not abuse its discretion by finding by a preponderance of the evidence that Carbajal participated in a bank robbery. The fact that Carbajal was acquitted at trial of the bank robbery charges is not relevant because of the different standards of proof. See, e.g., United States v. Morgan, 942 F.2d 243, 246 (4th Cir. 1991) (noting that preponderance of evidence standard is less demanding than proof beyond a reasonable doubt).

Accordingly, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED